

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 242 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

POSHATAR ARJANBHAI

HARSURBHAI

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR KG SHETH APP for Respondent No. 1

MR MJ BUDDHBHATTI for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/04/2001

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this Criminal Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (for short "Code"),

challenging the judgement and order dated 22.2.2000 recorded by the learned Additional Sessions Judge at Bhavnagar in Criminal Revision No. 7/2000, under which, the learned Additional Sessions Judge allowed the said revision application of contesting respondent no. 2 herein and directed that the respondent no. 2 be discharged from the criminal case No. 132/99, which was pending before the learned Judicial Magistrate First Class at Ghogha in Bhavnagar district for the offences punishable under Section 224 of the Code read with Section 110 and 117 of the Bombay Police Act, arising from Ghogha Police Station Crime Registration No. 46/99, filed at the instance of the present petitioner against contesting respondent no. 2.

2. The facts may be briefly stated as follows :-

Respondent no. 2 was arrested by the present petitioner, who is the PSI of Ghogha Police Station at Bhavnagar in connection with the offence registered with the Police Station at CR. No. 45/99 for the offences punishable under Section 342, 334, 504, 506(2) of Indian Penal Code read with Section 114 of the Indian Penal Code. It was the contention of the present petitioner that contesting respondent no. 2 as well as his co-accused Saltaf Bhikhubhai Siya started raising shouts at the police station and ultimately, according to the petitioner, he tried to run away from the custody of the petitioner and therefore, he was chased and arrested. Thereafter, a second FIR was filed against the petitioner being Ghogha Police Station CR. No. 46/99 at about 7 p.m.

3. The Second FIR being CR. No. 46/99 was investigated by the Investigating Officer at Ghogha Police Station. On conclusion of the investigation, chargesheet was filed against contesting respondent no. 2 and it was registered before learned JMFC at Ghogha at Criminal Case No. 132/99.

4. In the aforesaid criminal case, the contesting respondent submitted an application 8/12/99 stating that the chargesheet has been wrongly filed and therefore, the contesting respondent may be discharged from the aforesaid criminal case No. 132/99. The learned Magistrate found that the facts in question could not be decided without recording evidence and therefore, the learned Magistrate passed an order on 13th December, 1999 rejecting the said application of the contesting respondent for discharging him from Criminal Case No. 132/99.

5. Feeling aggrieved by the said order of the learned Magistrate, the contesting respondent preferred Criminal Revision Application No. 7/2000 before the Sessions court at Bhavnagar. The learned Additional Sessions Judge heard the said revision application and after hearing the parties, the learned Additional Sessions Judge was pleased to allow the said revision application and directed that the contesting respondent be discharged from the criminal case No. 132/99.

6. Feeling aggrieved by the said judgement and order of the learned Additional Sessions Judge, the petitioner - original informant has preferred this Criminal Revision Application before this Court under Section 397 of the Code.

7. It has mainly contended here that the learned Additional Sessions Judge has not properly considered the pros and cons of the material made available to him. That the material evidence has not been taken into consideration and the order of discharge has been recorded mainly on the ground that the FIR was lodged by seven hours late. That on the whole, the judgement and order of discharge are illegal and erroneous and deserve to be set aside. The petitioner has therefore, prayed that the present revision application be allowed and discharge order passed by the learned Additional Sessions Judge dated 22.2.2000 in Criminal Revision Application No. 7/2000 be set aside and direction be issued that contesting respondent be tried before the learned Magistrate in accordance with law.

8. Rule was issued at the first instance and Mr. M.J. Buddhbhatti, learned advocate appears on behalf of contesting respondent no. 2, whereas, Mr. K.G. Sheth, learned APP appears for the State of Gujarat i.e. respondent no. 2.

9. I have heard Ms. Bela Prajapati, learned advocate appearing for Mr. B.M. Mangukia, Mr. K.G. Sheth, learned APP for respondent no. 1 and Mr. M.J. Buddhbhatti, learned advocate for the contesting respondent no. 2. I have perused the papers made available to me.

10. It has been argued at length on behalf of the petitioner that the learned Additional Sessions Judge has mainly discharged contesting respondent no. 2 on the ground that the incident took place at about 12 noon and the incident took place at the police station itself in

presence of the present petitioner and the FIR has been filed late at 7 p.m.. The learned Additional Sessions Judge has also found that in the meantime, the contesting respondent was produced before the learned Magistrate and there, he made a grievance about the ill-treatment said to have been extended to him by the petitioner. That therefore, with a view to have a counter blast, second FIR has been filed at 7 p.m. by the present petitioner against respondent no. 2. That on this consideration, the contesting respondent has been discharged by the learned Additional Sessions Judge and therefore, it is argued that the learned Additional Sessions Judge did not consider the remaining material on record and appreciation of evidence to the extent shown by the learned Additional Sessions Judge was not permissible at the stage of framing of charge and therefore, according to the arguments of the learned advocate for the petitioner, the judgement and order of the learned Additional Sessions Judge are illegal and erroneous.

11. Mr. Buddhbhatti, learned advocate for contesting respondent no. 2 had argued at length that though the contesting respondent was in the custody of the petitioner right from the 12 noon and though, incident in question is said to have taken place at around 12 noon, the FIR has been filed by 7 hours late and therefore, it is bogus and false FIR filed by the petitioner against the contesting respondent and therefore, according to him, the judgement and order recorded by the learned Additional Sessions Judge are proper. It is also his argument that after being produced before the learned Magistrate, the contesting respondent had complained regarding ill-treatment said to have been extended by the petitioner and on account of the said complaint, the learned Magistrate had taken cognizance of the said offence against the petitioner and therefore, the present FIR has been filed as a counter blast against the said complaint of the contesting respondent.

12. Even if, the FIR is said to be late at by 7 hours that cannot be the sole ground for discharging the contesting respondent. Evidence on record is not required to be deeply considered at the stage of framing of charge. It is to be seen that the chargesheet has been filed. It has been registered as Criminal Case No. 132/99 before the learned Magistrate and copy of the chargesheet, shown to me by Mr. Buddhbhatti, clearly, shows that there are as many as 14 witnesses named as witnesses for the prosecution to be examined at the trial. The learned Additional Sessions Judge did not even consider it proper to have a look at the copy of the

chargesheet. He has not seen the statements made by other witnesses apart from the FIR of the petitioner. These witnesses prima-facie support the case of the petitioner and the learned Additional Sessions Judge could not have ignored their statements at the stage of framing of charge. Sufficiency of material cannot be gone into at the stage of framing of charge and it was required to be seen as to whether, a prima-facie case existed against the contesting respondent. The petitioner's case was supported by other witnesses. These statements have been recorded and the copies of statements have been supplied to the contesting respondent well in time. Therefore, it cannot be said that those witnesses could be ignored at the stage of framing of charge.

13. Learned advocate for the contesting respondent has taken me through the judgement of the learned Additional Sessions Judge, but nowhere it was found that the learned Additional Sessions Judge had considered the statement of any other witness.

14. Even the merit of the FIR filed by the petitioner registered as Ghogha Police Station CR. No. 46/99 has not been gone into by the learned Additional Sessions Judge. The learned Additional Sessions Judge has mainly considered the fact that the FIR was late by 7 hours and that it has been filed subsequent to the complaint filed by the contesting respondent against the petitioner.

15. Now, if the petitioner wanted to do something wrong, then he was the head of the police station. The FIR register was available with him. He being the head of the police station could make a show that the FIR was not filed late or he could show that the FIR was filed on 1 p.m. or 2 p.m., but he did not do so. This prima-facie shows that the fact stated in the FIR cannot be brushed aside at the stage of framing of charge.

16. More over, the statement made in the FIR has been supported by other witnesses. It has been argued that those witnesses are the police witnesses but when the offence is said to have been committed in the police station itself, independent witnesses could not be expected to be there at 12 noon.

17. Any way, the fact remains that there is a FIR lodged by the petitioner himself and the FIR has been supported by the other witnesses, who were allegedly present at the time of the alleged offence. The learned Additional Sessions Judge has totally ignored the

consideration of the statements of those witnesses. In that view of the matter, it cannot be said that the learned Additional Sessions Judge had applied his mind to the material available with him.

18. When it is the case of non application of mind, the judgement and order recorded by the learned Additional Sessions Judge cannot be sustained in the eye of law.

19. It has been further contended on behalf of the contesting respondent that the matter may be remanded back to the learned Additional Sessions Judge for reconsideration. I think that it is not necessary to accept this prayer or suggestion because, since the matter will go to the learned Magistrate, it is true that the learned Magistrate had declined to discharge the contesting respondent. However, it seems that the contesting respondent advanced his argument and placed evidence at the stage of framing of charge and after considering the material available with him, the learned Magistrate will certainly decide and dispose of the matter.

20. In any way, I am of the opinion that the learned Additional Sessions Judge has not properly applied his mind to the material made available to him. The record shows that statements of witnesses have been recorded but the learned Additional Sessions Judge has totally ignored to consider those statements. In that view of the matter, it cannot be said that the judgement and order recorded by the learned Additional Sessions Judge are legal and proper.

21. In above view of the matter, the judgement and orders are required to be quashed and set aside.

22. For my foregoing reasons, I am of the opinion that the judgement and order recorded by the learned Additional Session Judge are not legal and proper and they are ex-facie illegal and erroneous and therefore, it is necessary for this Court to interfere to do justice to both the parties.

24. In above view of the matter, this revision is allowed and the judgement and order of the learned Additional Sessions Judge are set aside and the matter will naturally be placed before the Learned JMFC Ghogha for disposal of Criminal Case No. 132/99 in accordance with law. Rule made absolute to that extent.

(D.P. Buch, J.)

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